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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In re Application of	)	MM DOCKET NO. 92-122
	)	
CALVARY EDUCATIONAL	)	
BROADCASTING NETWORK, INC.	)	File No. BRED-891103UA
	)	
For Renewal of License of	)	
Station KOKS(FM),	)	
Poplar Bluff, Missouri	)	

To: Chief Administrative Law Judge  
Joseph Stirmer

**MASS MEDIA BUREAU'S REPLY TO**  
**PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

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Summary

1. The Mass Media Bureau submits that the attempts by Calvary Educational Broadcasting Network, Inc. ("Calvary") to blame Messrs. Baggett and Abernathy for its noncompliance with the blanketing rule should be rejected. Similarly, Calvary cannot rely on its misunderstanding with respect to its obligation to restore service to Channel 6 to exonerate its failures to comply with the blanketing interference rule. Many complaints allege interference to other channels. The weight of the evidence does not support Calvary's arguments that the interference complained of is not caused by blanketing.

2. Calvary's claim that its misrepresentations were inadvertent is belied by the evidence, as are its attacks upon the credibility of Doris Smith and Jean Hillis. Calvary is wrong when it insists that it corrected earlier misrepresentations.

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**MASS MEDIA BUREAU'S REPLY TO  
PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. On February 5, 1993, Calvary Educational Broadcasting Network, Inc. ("Calvary") filed its proposed findings of fact and conclusions of law. The Mass Media Bureau hereby submits its reply. The Bureau's failure to respond to a particular finding of fact or conclusion of law should not be considered a concession to its accuracy or completeness.

**Blanketing Interference**

2. In ¶ 10 Calvary submits that Don Stewart did not discover the October 21, 1988, letter from the Commission's Kansas City field office ("Kansas City FOB") until after Jim Baggett resigned during the latter part of November 1988. In ¶ 104 Calvary seeks to exonerate its initial failures to resolve blanketing complaints by arguing that Baggett and/or Abernathy kept the Stewarts in the dark about the complaints and their unsuccessful efforts with respect to them. Calvary's attempt to exonerate itself should be rejected. Baggett was one of Calvary's officers and directors. MMB Ex. 12, pp. 2-3. Moreover, Calvary's December 6, 1988, letter to Kansas City FOB makes no mention that Calvary had only recently discovered Kansas City FOB's October 21, 1988, letter. To the contrary, Calvary's letter purports that the subject of interference complaints had been discussed repeatedly between Mrs. Raines and Mr. Dunne for the past several weeks and that Calvary had been diligently

attempting to investigate and resolve blanketing complaints. MMB Ex. 15, p. 1. In sum, Calvary's attempt to blame the long-departed Baggett and Abernathy for any non-compliance with the blanketing interference rule should be rejected.

3. At various points (¶¶ 13-15, 85-86, 111) Calvary asserts that the majority of complainants were concerned solely with interference to Channel 6. Calvary then argues that, because it believed it had no obligation to restore reception of Channel 6, it did not willfully violate the blanketing interference rule, nor did it misrepresent facts when it reported that it had cured complainants' problems. The Bureau does not dispute that Channel 6 was the television channel most severely affected by KOKS. The Bureau also does not dispute that, prior to the issuance of the Hearing Designation Order, 7 FCC Rcd 4037 (1992) ("HDO"), Calvary had no definitive statement from the Commission with regard to its obligations vis-a-vis Channel 6.<sup>1</sup> However, the complaints received by Calvary (many of which are attached to Calvary's September 22, 1989, letter to the Chief, FM Branch), make plain that the vast majority of complainants were experiencing television reception problems from KOKS to more than just Channel 6. Similarly, those complaints (and many others) allege KOKS interference to radios. Yet, Calvary's letters of January 24, 1989, and February 24, 1989, to Kansas City FOB, and

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<sup>1</sup> In the HDO, the Commission explicitly told Calvary that its obligation to restore Channel 6 was the same as its obligations vis-a-vis channels 8, 12 and 15. However, Calvary has taken no additional steps to restore reception of Channel 6.

its September 22, 1989, letter to the Chief, FM Branch, indicate that complainants' problems with channels other than Channel 6 were cured even though reception had not been restored to the quality enjoyed by complainants prior to the advent of KOKS. See MMB Exs. 17, 19, 21. Similarly, Calvary's February, 1991, reports do not reveal that, in virtually all instances, Calvary attempted to restore service to only one television per household, nor do they reveal that Calvary took no steps to address complaints of interference to radios. See MMB Exs. 26, 27. Although Calvary denies that it intentionally limited repairs to television sets (¶¶ 16, 98-99), it is clear from Calvary's 1990 questionnaire that it had no intention of dealing with radios and, in fact, did not do so. See MMB Ex. 26, Pp. 4-73; MMB Ex. 27, Pp. 3-56.

4. At ¶¶ 34-5, 94, 109, Calvary seeks to confuse matters by contending that television reception problems in the Poplar Bluff area occur in part because of co-channel interference and, in part, because of interference from the Missouri highway patrol's two-way radio transmissions. The weight of the evidence, however, does not support Calvary. No complainant ever described problems which suggested that co-channel interference had any impact on television reception, and no FCC inspector ever found or noted the possibility of co-channel interference. Further, while FCC inspectors did note the existence of intermittent interference to television reception, which was apparently caused by transmissions from the Missouri highway patrol substation,

each complaining witness testified that there was a fundamental difference between KOKS' interference and interference from the highway patrol. Specifically, the former was severe and constant, while the latter was weak and sporadic. E.g., Tr. 967, 972, 1053-54. Moreover, even if some complainants' problems were the result of IF beat interference, it is clear that such interference is akin to blanketing interference in terms of how it affects a television receiver and that IF beat interference would not have occurred but for the operation of KOKS. Tr. 833-34, 884-85.<sup>2</sup>

5. Calvary's reliance, at ¶ 25 and 108, on on-the-ground signal measurements by FOB engineer Clark Poole is misplaced. Measurements taken by FOB engineer Ronald Ramage show signal strengths 2 to 5 times higher. A review of the methodologies employed by the two engineers shows that Ramage's conclusions are more reliable. Compare MMB Ex. 1, p. 16, with KOKS Ex. 5, p. 3. As Calvary concedes, at ¶ 108, all indications are that Poplar Bluff is within the Grade B contour of channels 8 and 12.

6. In reviewing the December 1989, Kansas City FOB visit to Poplar Bluff by FCC inspectors Moffit and Raines (¶¶ 27-29), Calvary omits or misstates several matters. With respect to Doris Smith, Calvary does not point out that, when KOKS stopped transmitting, Channel "8 came in very well." KOKS Ex. 6, p. 5.

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<sup>2</sup> With respect to Calvary's suggestion, at ¶ 117, that the absence of a herringbone pattern means that blanketing is not present, suffice it to say that FOB engineer Ronald Ramage's testimony belies that suggestion. See, Tr. 830, 886-87.

With respect to the Farleys, the report does not state that all channels received intermittent two-way interference. The only channels apparently affected by two-way interference were 12 and 15. Further, while the report claims that Farley acknowledged that the filter left at his home by Calvary some eleven months earlier "now works," the Bureau notes that the only filter identified is one which the FCC inspectors used and which is a different model from any filter ever used by Calvary. KOKS Ex. 6, p. 11. Finally, with respect to Joanne Gray, Calvary asserts that the quality of the picture on Channel 15 was better with KOKS on the air. The quality of the picture on Channel 15 varied according to whether the VCR or television was used as a tuner. KOKS Ex. 6, p. 13.

7. Calvary contends that its actions with respect to persons who owned boosters were reasonable. For example, at ¶¶ 55-56, 114, Calvary notes repeatedly that Thomas Crutchfield had a booster. Thus, Calvary concludes that it owed no duty to Crutchfield. However, Calvary never denies that Crutchfield purchased the booster and other equipment and wiring after KOKS started broadcasting in an attempt to address the reception problems caused by KOKS. MMB Ex. 1, p. 53. Rather, Calvary simply argues that Crutchfield never told Calvary when and why he purchased the booster. The Bureau submits, however, that the record is silent as to this point, and, in any event, it is reasonable to infer that Calvary never asked Crutchfield. Alternatively, it may be inferred that Crutchfield told Calvary



just as he told Ramage, but that Calvary paid Crutchfield no heed because it was concerned only with the fact that Crutchfield now had a booster.<sup>3</sup> In any event, Calvary never offered to reimburse Crutchfield for the expenses he incurred in his attempts to remedy KOKS blanketing interference.

Misrepresentation/Lack of Candor

8. Calvary contends in ¶¶ 11 and 88 that Nina Stewart never intentionally misrepresented facts in any submission to the Commission. Calvary argues that, having received more than 1200 complaints and having visited "hundreds" of homes, it should not be surprising that Nina Stewart missed a few complaints or that her subjective assessment of the improvements made by Calvary's filters was not agreed to by all complainants. This argument is plainly wrong. Calvary did not simply miss a few complaints. Hundreds of persons complained repeatedly because Calvary did not solve the problems it caused. Many of these persons are Calvary's immediate neighbors. Had Calvary acted in good faith, there is no reason to believe that complaints would have continued.

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<sup>3</sup> Such conduct would be consistent with Calvary's view concerning Leatha Piper, who bought a booster after KOKS began broadcasting. MMB Ex. 21, p. 16. With respect to Dariel Denton, Calvary's approach was not to ascertain how many televisions he had, how many were connected to the booster, or even whether the booster was connected. Rather, after Calvary determined that Denton had a booster, Calvary considered the matter closed by sending Denton a letter telling him he could buy a filter from Radio Shack or from Charles Lampe. Tr. 1045-48; MMB Ex. 27, pp. 80-82.

9. Calvary argues in ¶ 89 that it is unlikely that Nina Stewart would have consciously misrepresented the results of her visits to complainants' homes when she "knew" that her response would be subjected to "the most searching scrutiny." However, there is little in the record to support this theory. Indeed, there is no evidence that Calvary ever sent to the complainants any of its 1988 and 1989 letters to Kansas City FOB or to the Mass Media Bureau or that those letters were ever reviewed by the complainants.

10. Calvary insists at ¶¶ 11, 92 and 95 that its representations must be interpreted in light of the knowledge it acquired from its engineer, Charles Lampe; namely, that there was no blanketing interference in the television sets he saw in 1991. Whatever merit this argument may have with respect to an assessment of Calvary's 1991 reports to the Commission, it has absolutely nothing to do with Calvary's 1988 and 1989 responses, which were formulated without Lampe's input.

11. At ¶ 19, Calvary seeks to excuse its practice of not referring to written complaints before going to a complainant's home to effect repairs. It claims that Nina Stewart believed that the information in the written complaints may not have been accurate because certain complainants had disavowed their written complaints. This is ridiculous. Even if the examples cited by Calvary were true, they represent a miniscule percentage of the complaints received by Calvary. The truth of the matter is that Nina Stewart did not have a good reason for ignoring the written

complaints. Indeed, she testified that she did not take the complaints with her because it did not occur to her to do so. Tr. 571.

12. At ¶ 87, Calvary concludes that "[i]n each and every instance, then, Calvary's original representation had been corrected or modified to make it clear that it was no longer accurate." Apparently, Calvary is claiming that its September 22, 1989, letter accurately depicted the situation relative to all complainants and informed the Commission about erroneous representations made in Calvary's letters to Kansas City FOB. Calvary is wrong. The September 22, 1989, letter states: "Calvary notes that many of the complaints to which it responds herein have already been addressed in reports and responses sent to Mrs. Karen Raines of the FCC's Kansas City field office...." MMB Ex. 21, p. 1. Calvary's letter says nothing about correcting earlier responses, and, in fact, no such correction is evident.

13. At ¶ 47 Calvary suggests that it had no reason to believe that it had not cured Joanne Gray's problems. This suggestion should be rejected. Gray's testimony made clear that Calvary principals knew their efforts had not succeeded. MMB Ex. 7, p. 3; Tr. 978-79. Consistent with that view, Gray complained in writing that Calvary had not cured her problems only two days after Calvary's February 1989 visit to her home. Moreover, she repeated her complaint in June 1989. Despite the fact that Nina Stewart read both of these complaints, Calvary never returned to Gray's home. Tr. 450.

14. Calvary points out at ¶ 48 that there is no evidence that it received the February 26, 1989, complaint from Edward Hodgins. However, in view of the fact that Calvary received and read other complaints made during the same time period, it is reasonable to infer that Calvary also received and read Hodgins' complaint. It is also reasonable to infer that Calvary treated Hodgins' complaint in the same manner as it had treated those of Durbin, Gray, Smith, Hillis, Wynn and Denton -- by doing nothing at all.

15. Calvary's attacks on the credibility of Doris Smith and Jean Hillis do not withstand scrutiny. First, Calvary seeks to discredit Smith by claiming that she had complained about interference even before KOKS commenced broadcast operations. Specifically, both Don and Nina Stewart testified that on April 1, 1988, following a newspaper announcement that the station would commence operations on that date, Smith called to complain about KOKS. However, no copy of the announcement was produced, and Smith denied having complained about her reception prior to the start of operations on KOKS. Tr. 900-03. Moreover, Calvary never explains why its new version is any more believable than its off-handed note in its January 24, 1989, letter to Kansas City FOB, that Smith had complained on March 16, 1988 about interference on her television,<sup>4</sup> after the tower was constructed.

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<sup>4</sup> Calvary's reliance on a call from Calvary board member Clanahan to Nina Stewart that unnamed others also complained about interference on April 1, 1988, is uncorroborated in any way by Clanahan and, in any event, unpersuasive.

MMB Ex. 17, p. 87.

16. At ¶¶ 38-41, 99-100, 105, 118-120, Calvary seeks to paint Smith and Hillis as unreliable witnesses because of their efforts to have KOKS taken off the air. Calvary's arguments should be rejected. The Smith and Hillis testimony was credible and supported by other witnesses, including Kansas City FOB inspectors. Of course, Smith and Hillis were angry with Calvary. Their written and oral testimony made it clear that they had good reason to be. First, their television and radio reception was severely affected after KOKS became operational. Further, despite repeated requests that Calvary take appropriate action, Calvary essentially took no action to help either Smith or Hillis until February 1991, more than three years after they initially complained about KOKS interference. Even then, Calvary did no more than attempt to fix one television set, despite the fact that Smith's and Hillis' complaints alleged interference to other protected equipment. In view of the above, it should hardly be surprising that Smith and Hillis do not want the Commission to grant Calvary's license renewal application. Moreover, Calvary has not established that the testimony of Smith and/or Hillis is not credible.

17. The Craig Meador visit to the Stewart home is also indicative of the Stewarts' willingness to deceive. The differences in recollection between the Stewarts and Meador are stark. According to the Stewarts, Meador was at their house in the summer of 1988 before KOKS was on the air. According to

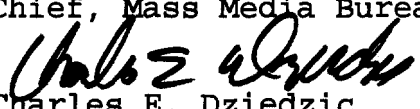
Meador, he was there in the early winter of 1988-1989, after the station was on the air, when the weather was cold and there was no foliage on the trees. If the Stewarts are to be believed, Meador could not have seen and heard what he testified seeing and hearing; namely, Don Stewart operating KOKS over its authorized power and remarking that he wanted to see whether he could reach Memphis with KOKS' signal. However, as Calvary acknowledges, there is no reason for Meador to lie. There is such a reason for Don Stewart. Thus, the ultimate significance of this disagreement in testimony is not the brief period of over-power operation by KOKS, but the willingness of Don Stewart to lie about it.

18. Calvary seeks to avoid a conclusion that its February, 1991, reports misrepresented its efforts to comply with the Commission's October 30, 1990, Order. Calvary notes that the reports were prepared by Nina Stewart while the policy of limiting repairs to one television per household was determined by Don Stewart. Calvary seems oblivious to the fact that Don Stewart is the president of Calvary as well as one of its directors. Thus, it is not surprising that he should institute station policies. Moreover, contrary to the impression given by Calvary, the February, 1991, policy of limiting the use of filters to one television per household was entirely consistent with Calvary's efforts to minimize its expenses.

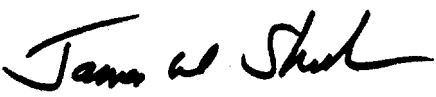
Ultimate Conclusion

19. Because of Calvary's willful and repeated failures to comply with Section 73.318 of the Commission's Rules (FM blanketing interference) and its misrepresentations and lack of candor to the Commission, Calvary's application for renewal of license for Station KOKS(FM) should be denied. Any sanction short of denial of renewal, such as those suggested by Calvary in ¶ 123, are inappropriate because of Calvary's manifest deceit. In addition, because Calvary's license renewal application should be denied, no forfeiture should be imposed even though Calvary willfully or repeatedly violated Sections 73.318, 73.1015, and 73.1560 of the Commission's Rules.

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February 25, 1993

**CERTIFICATE OF SERVICE**

Michelle C. Mebane, secretary of the Hearing Branch, Mass Media Bureau, certifies that she has on this 25th day of February, 1993, sent by regular United States mail, U.S. Government frank, copies of the foregoing "**Mass Media Bureau's Reply to Proposed Findings of Fact and Conclusions of Law**" to:

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